

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

OCEANSTAR MARINE CO.,

Plaintiff,

V.

NORVIC SHIPPING INTERNATIONAL LTD.
and NORVIC SHIPPING NORTH AMERICA
INC.

Defendants.

IN ADMIRALTY

CASE NO.:

VERIFIED COMPLAINT

COMES NOW Plaintiff OCEANSTAR MARINE CO. ("OCEANSTAR" or "Plaintiff"), by its undersigned counsel, as and for its Verified Complaint against the Defendant NORVIC SHIPPING INTERNATIONAL LTD. ("NSI") and NORVIC SHIPPING NORTH AMERICA INC. ("Norvic Shipping") (NSI and Norvic Shipping collectively referred to as "Defendants"), alleges and pleads as follows:

JURISDICTION AND VENUE

1. Subject matter jurisdiction of this Honorable Court is based upon admiralty and maritime jurisdiction pursuant to 28 U.S.C. §1333, and is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. Plaintiff invokes the maritime procedures and special relief provided in Rule B (maritime garnishment and attachment, *quasi in rem*) of the Supplemental Rules for Certain Admiralty and Maritime

Claims of the Federal Rules of Civil Procedure.

2. Venue is proper in this District Court pursuant to 28 U.S.C. §1391(b), and intradistrict assignment to the Tacoma Division is appropriate because property belonging to the Defendant, to wit, bunkers onboard the M/V MAJORCA, is at anchorage near the Port of Tacoma.

THE PARTIES

3. At all times material hereto, Plaintiff OCEANSTAR was and still is a foreign business entity organized under the laws of a foreign country.

4. At all times material hereto, Defendant NSI was and still is a foreign business entity organized under the laws of Bermuda, and maintains its corporate head office at SSQ Place, 110 Sheppard Avenue East, Suite #309, P.O. Box 6, Toronto, Ontario M2N6Y8, Canada.

5. At all times material hereto, Defendant Norvic Shipping was a foreign business entity organized under the laws of Canada, and maintained its corporate head office at SSQ Place, 110 Sheppard Avenue East, Suite #309, P.O. Box 6, Toronto, Ontario M2N6Y8.

FACTS

6. On or about December 30, 2016, Plaintiff OCEANSTAR, as owners of the M/V YASA AYSEN, entered into a time charter party agreement with Defendant Norvic Shipping, wherein Plaintiff agreed to let and Norvic Shipping agreed to hire the M/V YASA AYSEN for a one time charter trip from Indonesia to the east coast of India with a cargo of stem coal in bulk for a duration of about twenty-five (25) and thirty (30) days without guarantee. A copy of the Time Charter is attached hereto as **Exhibit 1**.

7. The December 30 charter party agreement is a maritime contract.

8. The parties further agreed to the arbitration of disputes arising out of the maritime contract in London with English law to apply pursuant to Clause 108, LMAA Arbitration. *See Exhibit 1.*

1 9. Plaintiff duly delivered the M/V YASA AYSEN on December 31, 2016. The
2 vessel was loaded with a cargo of steam bulk coal on or about January 12, 2017. A copy of the
3 Delivery Notice is attached hereto as **Exhibit 2**.

4 10. On March 13, 2017 the M/V YASA AYSEN arrived in Mongla, Bangladesh to
5 discharge the cargo.

6 11. On March 15, 2017, cargo receivers refused to continue unloading the cargo
7 due to alleged burning and smell located in cargo number 1 hold, which affected the cargo, and
8 delayed discharge of the M/V YASA AYSEN.

9 12. On March 26, 2017, the M/V YASA AYSEN was arrested by cargo interests.
10 The vessel was not released until May 4, 2017 on the posting of a bank guarantee totalling
11 \$815,000 by OCEANSTAR.

12 13. Defendant Norvic Shipping re-delivered the M/V YASA AYSEN on May 9,
13 2017. A copy of the Re-Delivery Notice is attached hereto as **Exhibit 3**.

14 14. On May 9, 2017, Plaintiff issued an initial Unpaid Hire statement to Norvic
15 Shipping for the balance due of USD \$359,622.19¹ for *inter alia*, outstanding unpaid hire due
16 and owing under the December 30 Charter. A copy of the Invoice is attached hereto as **Exhibit**
17 **4**.

18 15. On August 7, 2017, Defendant Norvic Shipping announced that Norvic
19 Shipping is now NSI, and that Defendant Norvic Shipping “are now doing all of our dry bulk
20 ocean transporation under the name of Norvic Shipping International Ltd.” A copy of this
21 announcement is attached hereto as **Exhibit 5**, and is available at:
22 <http://www.norvicshipping.com/2017/08/07/norvic-norvic-shipping-international-ltd/>.

23 16. NSI is a successor corporate business entity and a mere continuation of Norvic
24 Shipping.

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¹ This amount was lowered to \$310,473.69 by a partial payment of \$49,148.50.

1 17. NSI is the successor corporation of Norvic Shipping in that: a) NSI has retained
2 the same employees of Norvic Shipping; b) NSI has retained the same supervisory personnel
3 from Norvic Shipping; c) NSI occupies and carries on business from the same business
4 premises, *i.e.* SSQ Place, 110 Sheppard Avenue East, Suite #309, P.O. Box 6, Toronto,
5 Ontario M2N6Y8; d) NSI transacts its business by and through identical personnel as Norvic
6 Shipping; e) NSI shares common officers and directors with Norvic Shipping; f) NSI has taken
7 over and are servicing the same customers as were being served by Norvic Shipping; g) NSI
8 have virtually the same financing banks financing their business as Norvic Shipping; h) there is
9 continuity of assets from Norvic Shipping to NSI; i) there is continuity of general business
10 operations from Norvic Shipping to NSI; and j) NSI holds itself out as the continuation of
11 Norvic Shipping.

12 18. Notwithstanding the purported difference in companies, Defendants have
13 represented and warranted that Norvic Shipping is now NSI.

14 19. The operations of NSI are performed using the same employees working out of
15 the same address as previously under Norvic Shipping.

16 20. NSI and Norvic Shipping have in common key management personnel averring
17 that “[t]here is no change to the management of the company. The company continues to have
18 a permanent establishment in Canada and it continues to be wholly owned by the same
19 Canadian parent/holding company as in the past.” *See Exhibit 5.*

20 21. NSI and Norvic Shipping have notified customers that “[o]ur business partners
21 can still expect the same level of service they have become accustomed to. Our day-to-day
22 services will continue as usual and business processes remain unchanged.” *See Exhibit 5.*

23 22. By reason of the foregoing facts pled in averments ¶¶ 16-21, NSI is a mere
24 continuation of the business of Norvic Shipping, as evidenced by the identify of assets,
25 location, management, personnel, stockholders, and representations of Norvic Shipping and
26 NSI.

1 23. Accordingly, NSI is liable for Plaintiff's claims as the successor corporation of
2 Norvic Shipping.

3 24. Despite being duly and properly invoiced, Defendants have failed to pay
4 \$310,473.69 for the balance of hire, expenses, and costs which are indisputably due and owing.

5 25. In addition, due to Defendant's failure to abide by the terms of the Charter Party
6 to re-deliver the vessel within January 2017, Plaintiff was caused to suffer damages totaling
7 \$235,948.06 for lost hire and lost opportunity, as a result of the delays caused by Defendants.

8 26. Pursuant to the terms of the charter party, disputes between the parties are to be
9 submitted to arbitration in London with English law to apply. The parties are engaged in
10 London Arbitration.

11 27. This action is an ancillary proceeding, brought in order to obtain jurisdiction
12 over Defendant NSI and to obtain security for Plaintiff's claims in aid of the London
13 arbitration proceedings.

14 28. Interest, costs and attorneys' fees are routinely awarded to the prevailing party
15 under English Law. Section 63 of the English Arbitration Act of 1996 specifically allows for
16 recovery of these items as part of an award in favor of the prevailing party.

17 29. As best as can now be estimated, Plaintiff OCEANSTAR expects to recover the
18 following amounts in London Arbitration from Defendant NSI:

A. Unpaid Hire:	\$310,473.69
B. Loss and Damage:	\$235,948.06
C. Estimated Interest for Principal Claim: <i>2 years at 4.5%, compounded quarterly</i>	\$49,177.96
D. Estimated Arbitration Cost:	\$100,000
E. Estimated Attorney's Fees:	\$150,000
TOTAL:	\$845,599.71

26 30. Therefore, OCEANSTAR's total claim for breach of the maritime contract

1 against Defendant NSI is in the aggregate **USD 845,599.71.**

2 **REQUEST FOR ISSUE OF WRITS OF MARITIME ATTACHMENT AND**
3 **GARNISHMENT**

4 31. Plaintiff repeats and re-alleges each and every allegation contained in
5 paragraphs "1" through "30" and incorporates those allegations herein.

6 32. The Defendants are not present and cannot be found in the District within the
7 meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Law
8 Claims of the Federal Rules of Civil Procedure and Defendant are believed to have or will
9 have during the pendency of this action certain assets, accounts, freights, monies, charter hire,
10 credits, effects, payment for bunkers, goods or services, bills of lading, cargo and the like
11 belonging to, claimed by, or for the benefit of, the Defendants within this District held by
12 various parties as garnishees.

13 33. Pursuant to a separate time charter agreement, the bulk vessel M/V MAJORCA
14 is under time charter to the Defendant NSI, or nominees thereof, and is currently anchored
15 within the Western District of Washington, and is expected to conduct commercial operations
16 in the District. *See* contemporaneously filed Declaration of Deniz Sozen Ozoral.

17 34. The M/V MAJORCA has onboard tangible physical property of the said
18 Defendant or nominees, to wit: bunkers consisting of marine fuel oil and diesel oil owned by
19 NSI for the shipment of cargoes onboard the said vessel.

20 35. Plaintiff believes that the bunkers, or payment for the bunkers, currently located
21 on board the M/V MAJORCA, are assets of the Defendant NSI which are or will be located in
22 this District and potentially in the possession of garnishees, including, but not limited to TMS
23 Bulkers Ltd., *i.e.* the owner of the M/V MAJORCA. *Id.*

24 36. Moreover, Defendant NSI has appointed in the District steamship agents, to act
25 as their agent in respect of vessels operated by Defendant NSI and it is likely that the said
26 steamship agent has in its possession and/or control tangible or intangible property of

1 Defendant including but not limited to funds advanced by Defendant in respect of
2 disbursements, pilots, tugs, stevedoring services, port costs, and expenses relating to the
3 upcoming calls of the M/V MAJORCA, and also freights payable to the said Defendant in
4 respect of booking notes, bills of lading, or other contracts of affreightment.

5 37. Defendants cannot be found within the Western District of Washington for the
6 purposes of Rule B of the Admiralty Rules. *See* contemporaneously filed Affidavit of Attorney
7 Briton P. Sparkman.

8 **WHEREFORE PREMISES CONSIDERED**, Plaintiff prays as follows:

9 A. That process in due form of law, according to the practice of this Honorable
10 Court in cases of admiralty and maritime jurisdiction, issue against Defendants, citing
11 Defendants to appear and answer under oath all, and singular, the matters, alleged in the
12 Verified Complaint;

13 B. That this Court issue an Order directing the Clerk of the Court to issue Process
14 of Maritime Attachment and Garnishment pursuant to Supplemental Admiralty Rule B
15 attaching all property belonging to Defendants, tangible or intangible, up to the amount of at
16 least \$845,599.71, inclusive of interest, costs, and attorneys' fees due to Plaintiff, to secure the
17 Plaintiff's claim, and that all persons claiming any interest in any attached property be cited to
18 appear and, pursuant to Supplemental Admiralty Rule B, answer the matters alleged in the
19 Verified Complaint;

20 C. That after due proceedings, judgment be entered in favor of Plaintiff and against
21 the Defendant for the amount of \$845,599.71, plus interest and costs pled herein;

22 D. That the Court grant Plaintiff such other and further relief as may be just,
23 equitable, and proper.

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1 DATED this 5th day of April, 2018.

2 NICOLL BLACK & FEIG PLLC

3
4 /s/ Jeremy B. Jones
5 Jeremy B. Jones, WSBA #44138
6 Attorneys for Plaintiff

7 *Of counsel:*

8 Briton P. Sparkman (BS-5220)
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